

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3846 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARILAL T RAJGURU & ORS.

Versus

ASSTT DIST REGISTRAR OF COOP SOC, JAMNAGAR & ORS.

Appearance:

MR GR UDHWANI for Petitioners
MR VB GHARANIA for Respondent No. 1
None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioners filed this petition before this Court and challenge has been made therein to the orders passed by the Gujarat State Cooperative Tribunal, Ahmedabad, in appeal No.81 of 1985 dated 31st December 1985. Under this order, the Tribunal has confirmed the

order passed by respondent No.1 on 26th March 1985 under Section 93 of the Gujarat Cooperatives Act, 1961.

3. The facts of the case are not to be given in detail as the appeal filed by the petitioner has been dismissed only on the ground of limitation and that order is liable to be quashed and set aside for the reasons stated below.

4. The petitioners who were the members of the Executive Committee of the cooperative society, were made responsible for payment of compensation for the loss suffered by the respondent No.3 society, by the investigating officer after holding inquiry under Section 93 of the Act 1961. Challenge was made by the petitioners to the said order before the Tribunal. It is not in dispute that this order was appealable under Section 153 of the Act 1961. Sub Section 3 of Section 153 of the Act 1961 provides appeal against the order or decision under Section 93 of the Act 1961. Sub Section 4 of Section 153 provides that appeal under Sub Section 1, 2 or 3 shall be filed within two months from the date of communication of the order or decision. The only question to be decided in this Special Civil Application is on what date the order impugned in the appeal was communicated to the petitioners by respondent No.1. The Tribunal has proceeded on the fact that the said order has been communicated to the petitioners' society and as one of the petitioners was the President of the society, it should be presumed and assumed that all the petitioners had knowledge of the said order. But that was not the requirement of law. The fact that other petitioners were relatives of the President of the cooperative society has no relevance and is of no substance. Law has to be interpreted and given effect to strictly and Sub Section 4 of Section 153 of the Act 1961 made it obligatory on the part of the authority concerned to communicate the order or decision to all the aggrieved persons. The Tribunal has not held that the said order has been communication to the petitioners by respondent No.1 and thereafter delay has been made in filing the appeal. The Tribunal has lost sight of another important fact that all the petitioners were not in relation to the Secretary. So even if we go by the judgment, then at the most it may have some relevance to the case of the petitioner who was the President and not to the other petitioners. Appeal has been filed admittedly on 13th June 1985 and the delay has been taken in filing the appeal by holding that the petitioners were communicated with the order impugned therein on 9th January 1985 at 11.30 hours. The finding that the appellants were

communicated with the order on 9.1.85 is based on the fact that one of the appellants was the President and his son was the Secretary, but that reason may not be true for all the appellants. Moreover, merely on the ground that one of the appellants was the President, it is difficult to presume and assume and accept that all the petitioner have received information of the order on 9.1.85. Nothing has been produced on record from the side of society that after receiving the communication of the order by respondent No.1 if has communicated the same to the appellants.

5. In the result, this Special Civil Application succeeds and the order of the Tribunal impugned in this Special Civil Application is set aside and the matter is remanded back to it to consider the appeal filed by the petitioners on merits. Rule made absolute in aforesaid terms. No order as to costs.

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(sunil)